

## COMMITTEE REPORT

MR. PRESIDENT:

**The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 326, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1       Page 1, line 3, delete "the" and insert "**there is a**".
- 2       Page 1, line 7, delete "contemplates or is conditioned on a".
- 3       Page 1, delete line 8.
- 4       Page 1, line 9, delete "nonconditional franchisor,"
- 5       Page 2, line 1, after "by the franchisor" insert "**within thirty (30)**
- 6       **days of written notice advising of the proposed transfer**".
- 7       Page 2, delete lines 7 through 14.
- 8       Page 2, line 15, delete "(e)" and insert "**(d)**".
- 9       Page 2, line 20, delete "the written notice advising of the proposed
- 10       transfer" and insert "**all the information requested under subsection**
- 11       **(b)**".
- 12       Page 2, line 21, delete "objective" and insert "**reasonable**".
- 13       Page 2, line 22, delete "the transferee" and insert "**the prospective**
- 14       **transferee**".
- 15       Page 2, delete lines 24 through 42.
- 16       Page 3, delete line 1.
- 17       Page 3, line 2, delete "(g)" and insert "**(e)**".
- 18       Page 3, line 6, delete "(h)" and insert "**(f)**".
- 19       Page 3, between lines 9 and 10, begin a new paragraph and insert:
- 20       "**(g) A franchisor or distributor has a right of first refusal to**

1       acquire the new vehicle dealer's assets or ownership when there is  
2       a proposed change of more than fifty-one percent (51%) of the  
3       dealer's ownership, or the transfer of more than fifty-one percent  
4       (51%) of the new vehicle dealer's assets if all of the following are  
5       met:

6           (1) The franchisor or distributor notifies the dealer in writing  
7           of its intent to exercise its right of first refusal within sixty  
8           (60) days of notice of the proposed transfer given under  
9           subsection (a).

10          (2) The exercise of the right of first refusal will result in the  
11          dealer and the dealer's owners receiving consideration, terms,  
12          and conditions that either are the same as or better than those  
13          they have contracted to receive under the proposed change of  
14          more than fifty-one percent (51%) of the new vehicle dealer's  
15          ownership or the transfer of more than fifty-one percent  
16          (51%) of the dealer's assets.

17          (3) The proposed change of the new vehicle dealership's  
18          ownership or the transfer of the dealer's assets does not  
19          involve the transfer of assets or the transfer or issuance of  
20          stock by the dealer or one (1) or more of the dealer's owners  
21          to:

22           (A) a designated family member or members including:

23               (i) the spouse;

24               (ii) a child;

25               (iii) a grandchild; or

26               (iv) the spouse of a child;

27           (B) a partnership or corporation controlled by any of the  
28           family members described in clause (A); or

29           (C) a trust arrangement established or to be established:

30               (i) for the purpose of allowing the new vehicle dealer to  
31               continue to qualify as such under the franchisor's or  
32               distributor's standards; or

33               (ii) to provide for the succession of the franchise  
34               agreement to designated family members or qualified  
35               management in the event of death of the dealer or its  
36               principal owner or owners.

37          (4) Except as otherwise provided in this subdivision, the  
38          franchisor or distributor agrees to pay the reasonable

1 expenses, including reasonable attorney's fees, that do not  
 2 exceed the usual, customary, and reasonable fees charged for  
 3 similar work done for other clients, incurred by the proposed  
 4 owner or transferee before the franchisor's or distributor's  
 5 exercise of its right of first refusal in negotiating and  
 6 implementing the contract for the proposed change of the new  
 7 vehicle dealer ownership or the transfer of the dealer's assets.  
 8 Payment of expenses and attorney's fees is not required if the  
 9 dealer has failed to submit an accounting of those expenses  
 10 within twenty (20) days of the dealer's receipt of the  
 11 franchisor's or distributor's written request for such an  
 12 accounting. An expense accounting may be requested by a  
 13 franchisor or distributor before exercising its right of first  
 14 refusal."

15 Page 3, line 10, delete "(i)" and insert "(h)".

16 Page 3, after line 11, begin a new paragraph and insert:

17 "SECTION 2. IC 9-23-3-23 IS ADDED TO THE INDIANA CODE  
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 19 1, 1999]: Sec. 23. It is an unfair practice for a manufacturer,  
 20 distributor, officer, or agent to require, coerce, or attempt to  
 21 coerce any new motor vehicle dealer in Indiana to do either of the  
 22 following:

23 (1) Refrain from participation in the management of,  
 24 investment in, or acquisition of any other line of new vehicle  
 25 or related products. This subdivision does not apply if all of  
 26 the following apply:

27 (A) The new vehicle dealer maintains a reasonable line of  
 28 credit for each make or line of new vehicle.

29 (B) The new vehicle dealer remains in compliance with the  
 30 franchise agreement and any reasonable facilities  
 31 requirements of the manufacturer or distributor. The  
 32 reasonable facilities requirements may not include a  
 33 requirement that an existing new vehicle dealer establish  
 34 exclusive facilities, personnel, or display space, if such  
 35 requirements or any of them, would:

36 (i) be unreasonable in light of economic conditions; and

37 (ii) not otherwise be justified by reasonable business  
 38 considerations.

1           (C) A change is not made in the principal management of  
2           the new vehicle dealer.

3           This subdivision does not permit the addition of a line-make  
4           to the dealership facilities without the new motor vehicle  
5           dealer first requesting the written consent of the  
6           manufacturer or distributor.

7           (2) Establish or acquire wholly or partially a franchisor  
8           owned outlet engaged in a substantially identical business to  
9           that of the franchisee within the exclusive territory granted  
10          the franchisee by the franchise agreement or, if no exclusive  
11          territory is designated, competing unfairly with the franchisee  
12          within a reasonable market area. A franchisor is not  
13          considered to be competing unfairly if operating:

14               (A) a business either temporarily for a reasonable period  
15               of time;

16               (B) in a bona fide retail operation that is for sale to any  
17               qualified independent person at a fair and reasonable  
18               price; or

19               (C) in a bona fide relationship in which an independent  
20               person has made a significant investment subject to loss in  
21               the business operation and can reasonably expect to  
22               acquire majority ownership and managerial control of the  
23               business on reasonable terms and conditions."

(Reference is to SB 326 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 9, Nays 0.

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**Mills**

**Chairperson**